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State v. Hall Appellant's Brief Dckt. 40916

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. ROBERT DEAN HALL, Defendant-Appellant.	NO. 40916 ADA COUNTY NO. CR 2011-3976 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature of the Case

Rob Hall and his wife's lover, Emmett Corrigan, were involved in a physical altercation in the parking lot of a Walgreens in Meridian, Idaho, in March of 2011. Mr. Hall sustained a grazing gunshot wound to his head and suffered retrograde and anterograde amnesia – Mr. Corrigan suffered gunshot wounds to his head and chest and died at the scene. The State charged Mr. Hall with first degree murder. Mr. Hall asserted that the homicide was justified as he was acting in self-defense. The jury ultimately found Mr. Hall guilty of second degree murder.

Mr. Hall asserts there were multiple errors during his trial which deprived him of his right to a fair trial. First, he asserts that the district court erred in failing to give his requested instruction on the law of justifiable homicide. Next, he asserts, as fundamental error, that the self-defense instructions the court gave the jury incorrectly defined Idaho's justifiable homicide law, essentially lowering the State's burden of proving the homicide was unlawful. Third, Mr. Hall asserts that the district court abused its discretion by denying the admission of Facebook statements Mr. Corrigan made a few weeks or days prior to the incident, wherein Mr. Corrigan boasted of his intent to physically assault an un-named person the jury could reasonably conclude was Rob Hall. Additionally, Mr. Hall asserts that the court erred in allowing the State to present the testimony of a person who taught Mr. Hall's concealed weapons class, as the testimony was irrelevant. Finally, Mr. Hall asserts that the accumulation of the errors deprive him of his right to a fair trial.

Statement of the Facts and Course of Proceedings

Rob Hall and Kandi Hall married in 1994 and had two children, Hannah and Hailey. (Tr., p.894, L.17 – p.895, L.3.)[1] In 2005, the Halls moved from California to Idaho to provide a better life for their daughters. (Presentence Report (*hereinafter*, PSI), P.14.) After moving to Idaho, Mr. Hall found a job in the IT department for the Ada County Sheriff's Office. (PSI, p.20; Tr., p.895, Ls.8-15.) Rob helped develop an emergency vehicle tracking system, and his work performance was praised in his performance evaluations. (PSI, p.20.) His friends and fellow Sheriff's Office employees described him as quiet, low-key, and a good worker and father. (*E.g.*, Tr., p.1039, L.10 – p.1041, L.6, p.1058, L.18 – p.1060, L.10, p.1166, L.20 – p.1167, L.7.) But while Mr. Hall's work for the Sheriff's Office had been going well, his relationship with Kandi became distant. (*See* PSI, pp.15-16.)

Emmett Corrigan, his wife Ashlee Corrigan, and their four young children moved to Idaho after Emmett finished law school. (PSI, p.5.) Mr. Corrigan then opened a law practice. (PSI, p.5.) Beginning in October 2010, Ashlee began to have suspicions that her husband was having an affair with one of his employees. (Tr., p.1256, L.18 – p.1257, L.9.) She asked Emmett about those suspicions over the next few months, but he never gave her any information. (Tr., p.1257, Ls.10-18.) By January 2011, their marriage was deteriorating. (Tr., p.1271, Ls.17-21.) Emmett became very angry, and Ashlee suspected that he was drinking and using ADHD drugs and steroids. (Tr., p.1271, L.22 – p.1272, L.11.) At one point, she even searched the garbage, looking for "anything." (Tr., p.1270, Ls.2-7.) Ashlee went to a marriage counselor a few times, but Emmett's schedule did not allow him to attend and he was pretty defensive about why he did not need to go. (Tr., p.1260, Ls.12-16.)

[1] All citations to the transcripts in this brief are to the large two-volume transcript containing the complete trial and sentencing.

The employee Ms. Corrigan suspected of having an affair with her husband was Kandi Hall. (Tr., p.1256, Ls.18-25.) In September 2010, Kelly Rieker introduced Kandi to Mr. Corrigan, who had recently taken the Bar Exam and planned to start a criminal defense firm. (Tr., p.896, Ls.6-14.) Two weeks later, Emmett Corrigan and Kandi Hall began a sexual relationship. (Tr., p.897, Ls.8-11.) In November 2010, Ms. Hall started working for Mr. Corrigan as a paralegal. (Tr., p.895, Ls.4-7, p.898, Ls.13-19.)

Mr. Corrigan knew that Kandi Hall was married (Tr., p.902, L.24 – p.903, L.6), and she knew that he was married with four children at the time (Tr., p.897, Ls.15-17). They initially kept their affair secret, but it eventually became common knowledge among Ms. Rieker and Christopher Search, the other employees at Mr. Corrigan's office. (Tr., p.840, L.20 – p.841, L.3, p.898, Ls.20-25, p.902, Ls.17-23.) Mr. Corrigan even told two of his clients that he and Kandi were together. (Tr., p.841, Ls.6-14.)

Kandi Hall did not tell her husband about her sexual relationship with Mr. Corrigan. (Tr., p.897, Ls.18-20.) However, by Christmas 2010, Rob Hall suspected that she may have been having an affair. (PSI, p.16.) In January 2011, Rob wrote Kandi a series of emails detailing his sadness about their declining marriage, his exasperation regarding her behavior towards him, and his misgivings about her relationships with Emmett and one of her friends. (*See* State's Exs. 52BB – 52II.)

Even though he had not yet met him, Mr. Corrigan disliked Rob Hall from the first day he became involved with Kandi Hall, and he would constantly belittle Rob in Kandi's presence. (Tr., p.905, L.15 – p.906, L.17.) He would make fun of Rob by calling him "Gob." (Tr., p.906, Ls.6-11.) Emmett wanted Kandi to separate from her husband, and constantly put pressure on her to leave Rob. (Tr., p.908, Ls.17-19, p.909, L.25 – p.910, L.4.) But Kandi wanted to stay

with her husband while enjoying what she had with Emmett "on the side." (Tr., p.907, L.17 – p.908, L.2.)

Ms. Hall testified that she may have told Emmett that her husband was abusive towards her (Tr., p.979, Ls.14-20), and Mr. Search testified that Kandi had claimed her husband physical abused her. (Tr., p.1299, Ls.2-21.) However, Kandi told the jury that Rob Hall was never physically abusive towards her. (Tr., p.929, Ls.6-8.)

Ms. Hall further testified that she noticed that by January of 2011, Mr. Corrigan had become more controlling and aggressive, and had a short temper at work. (Tr., p.908, L.17 – p.909, L.23.) Mr. Search also told the jury that Emmett had a temper. (Tr., p.1244, Ls.8-9.) When Mr. Corrigan became aggravated or upset, he would shuffle his feet like a bull. (Tr., p.917, L.14 – p.918, L.4.)

Ms. Hall testified that, at one point, her husband went to Mr. Corrigan's office while she and Emmett were at the mall, and Rob spoke with her after they returned. (Tr., p.846, Ls.7-21.) Rob stated that he thought Kandi was not going to lunch that day. (Tr., p.846, L.22 – p.847, L.5.) Mr. Corrigan asked if there was a problem, and Mr. Hall replied there was not and left. (Tr., p.850, Ls.3-21.)

In late February 2011, Mr. Corrigan sent Kandi Hall a late evening text message to the effect of "I wish we were together tonight," and Mr. Hall had a phone conversation with Emmett about why he wrote the text message. (Tr., p.851, L.14 – p.853, L.11.) Emmett then showed up at the Halls' house, and he and Rob talked outside. (Tr., p.854, L.6 – p.856, L.9.) Kandi saw Emmett shuffle his feet. (Tr., p.919, Ls.4-6.) She testified that she did not witness any physical contact between her husband and Mr. Corrigan, but Rob appeared defeated when he returned to the house. (Tr., p.856, L.22 – p.857, L.4.)

Mr. Search testified that Emmett told him that, during the confrontation outside the Halls' house, Rob Hall told him to watch what he was doing or else he would have to talk with his wife about it. (Tr., p.1244, Ls.13-19.) Mr. Corrigan felt that Rob was threatening Kandi, and stated that Rob would be sorry if he ever touched her. (Tr., p.1244, Ls.20-23.) Mr. Search testified that Emmett stated he would have no problem hurting Rob the way that Rob hurt Kandi. (Tr., p.1244, L.24 – p.1245, L.1.) Mr. Corrigan also made statements on Facebook about his desire to fight someone with whom he had an altercation in February 2011. (Sealed Exs., p.115.)

On March 11, 2011, Mr. Corrigan and Ms. Hall met with Kevin Rogers at the Ada County Public Defender's Office to ask questions about getting a divorce. (Tr., p.862, L.12 – p.863, L.25.) Hannah Hall testified that when she came home from school that day, she saw her father packing up his garage. (Tr., p.2457, Ls.15-23.) Mr. Hall stated that he was going to move out, and he appeared to be sad but he was not angry. (Tr., p.2457, L.23 – p.2459, L.18.)

When Kandi Hall arrived home after work that evening, she found Rob Hall loading boxes so he could move out. (Tr., p.864, L.6 – p.865, L.7.) Kandi then admitted she was having an affair, but she told Rob that the affair was with an attorney in Oregon, without disclosing it was with Mr. Corrigan. (Tr., p.866, L.12 – p.867, L.13.) Kandi testified that Rob was not upset, but concerned and sad. (Tr., p.933, L.23 – p.934, L.7.)

When Emmett Corrigan arrived home from work that same night, Ashlee Corrigan tried to get her husband to discuss their marriage, but Mr. Corrigan became defensive and very angry. (Tr., p.1258, L.23 – p.1259, L.25.) After Ashlee told Emmett she had been talking about their marriage problems with her brother and sister, he yelled, "I could kill all of you." (Tr., p.1261, L.14 – p.1262, L.11.) When Emmett told Ashlee he was going to Walgreens to get some cough medicine, she asked him to stay so they could work on their marriage, but he went to Walgreens

anyway. (Tr., p.1266, Ls.7-18.) Mr. Corrigan had been constantly texting Kandi Hall that evening. (Tr., p.869, Ls.12-16; p.932, L.22 – p.933, L.6.)

When Kandi Hall did not respond to some of Mr. Corrigan's text messages, he texted Kandi's sister, Tina Lax, "Lol!!!! Hey Kandi just told me that she told rob she had an affair, but with someone else. She wont answer and I am worried. Can u call her and check on her please?" (State's Ex. 77A; *see* Sealed Exs., p.8.) He later texted Tina, "Any word? I can't get a hold of her. I am about ready to drive oover and beat his ass," and, "She just texted me and said he came back. I am sitting in my truck very close to her house. I wont let his sorry ass lay a finger on her again." (State's Ex. 77A.) In still another text message, Mr. Corrigan asked, "How did this shmuck even get her teen? He is such a bitch." (State's Ex. 77A.)

Rob Hall, after his discussion with his wife, left their home to visit his friend Danny Myers. (Tr., p.868, L.6 – p.869, L.6.) Mr. Myers testified that Rob had a beer when he came over, and he told Mr. Myers about his conversation with Kandi and his suspicions that she was having an affair with Mr. Corrigan. (Tr., p.1329, L.10 – p.1330, L.6.) However, Rob did not say anything negative about Emmett, or express an intention to hurt him. (Tr., p.1330, Ls.11-17.) Rob stated he was thinking of writing a letter to Ashlee Corrigan about the affair. (Tr., p.1331, Ls.8-20.) Mr. Myers told him not to do anything stupid regarding the letter. (Tr., p.1332, Ls.7-9.) Rob eventually stated he was going home and left. (Tr., p.1332, Ls.4-6.)

Kandi Hall left home soon after Rob did, to get a prescription at the Walgreens at the intersection of Linder and McMillan in Meridian. (Tr., p.869, Ls.7-11.) She told Mr. Corrigan she was heading to Walgreens, and he met her there. (Tr., p.869, L.17 – p.870, L.6.) At Walgreens, she got into his truck and the two drove to get gas. (Tr., p.870, Ls.17-25.) They then went to a housing subdivision and had sex. (Tr., p.871, Ls.4-16.) Hannah called her mother and asked her where she was, because Hannah had seen her mother's car parked at Walgreens.

(Tr., p.871, L.25 – p.872, L.12.) Kandi told her daughter that she was driving around with a friend. (Tr., p.872, Ls.13-16.)

Hannah called her father and told him that Kandi was at Walgreens. (Tr., p.2462, Ls.10-14.) She testified that Mr. Hall was not mad when she told him. (Tr., p.2462, Ls.13-14.) Rob then called Kandi while she was still driving around with Mr. Corrigan. (Tr., p.873, Ls.7-12.) Rob asked his wife what she was doing and who she was with, and she told him she was driving with Emmett. (Tr., p.873, Ls.13-23.) Emmett then took the phone and spoke with Rob. (Tr., p.873, L.25 – p.874, L.10.) During the conversation, Kandi heard Emmett state, "Yeah, fucking crack your head," or "Yeah, I'm going to crack your fucking head." (Tr., p.875, Ls.1-3, p.945, Ls.3-9.) He also told Rob, "Yeah, just wait there. We'll be there in a minute." (Tr., p.875, Ls.7-8.) They then arrived back at the Walgreens. (Tr., p.875, Ls.17-22.)

Mr. Corrigan pulled his truck into the Walgreens parking lot, and he and Ms. Hall got out of the truck. (Tr., p.877, Ls.4-22.) Emmett left the truck running and his door open. (Tr., p.877, L.18 – p.878, L.8.) Kandi saw her husband sitting in his truck in the parking lot, and Mr. Hall got out of his truck. (Tr., p.877, Ls.11-22.) Rob approached Emmett, and the two began to argue. (Tr., p.877, L.23 – p.878, L.18.) Kandi testified that Emmett insulted Rob about how little money he made compared to how much money he and Kandi were making together. (Tr., p.879, Ls.13-17.) He told Rob that Kandi did not want to be with him; Rob responded by pointing out to Emmett that he had five children and a wife at home (Ashlee had just had a baby). (Tr., p.879, Ls.6-10, p.881, Ls.12-22.) Kandi testified that Emmett's eyes became enormous, and he lunged at and pushed Rob. (Tr., p.881, L.23 – p.882, L.4.)

Ms. Hall testified that she stated, "That's enough," and told Rob they should go home, she then started walking towards her car, and could no longer see Mr. Hall or Mr. Corrigan.

(Tr., p.882, Ls.5-22.) She testified that she heard scuffling on the ground behind her. (Tr., p.882, Ls.22-25.) As she waited for a car to go by, she heard gunshots. (Tr., p.883, Ls.1-4.)

Sarah Johnson, who lived close to the Walgreens, was telling her son good night when she heard the gunshots, one shot followed by two more shots. (Tr., p.467, L.15 – p.474, L.5.) Ms. Hall also told the jury that she heard one shot followed by two more shots. (Tr., p.883, Ls.5-16.) However, Janae Schumacher, who was driving near the Walgreens with her two children, testified that she heard two shots followed by one shot.[2] (Tr., p.404, L.7 – p.411, L.20.)

Meridian Police Department officers were dispatched to the Walgreens in response to a shots fired call. (Tr., p.562, L.14 – p.564, L.3.) Mr. Corrigan was found dead near his truck. (*See* Tr., p.627, Ls.13-25.) He had sustained two gunshot wounds, one to the head and one to the chest. (*See* Tr., p.1772, Ls.1-6.) Both wounds were considered fatal. (Tr., p.1790, L.21 – p.1791, L.3.)

The officers found Rob Hall, profusely bleeding from a head wound, on the eastern side of the parking lot. (Tr., p.622, L.23 – p.623, L.18.) He had a grazing gunshot wound to the head. (Tr., p.794, Ls.5-11.) Detective Jacob Durbin inspected Mr. Hall's head wound at the hospital looking for any signs of singed hairs or stippling but he did not see any. (Tr., p.1373, L.16 – p.1375, L.11.) While at the hospital, Detective Christopher McGilvery chose not to collect hair samples from Mr. Hall because medical personnel did not observe "any charring or anything like that." (Tr., p.821, L.20 – p.822, L.14.) Flame injury such as singed hair would indicate that the firearm was fired very close to the target. (*See* Tr., p.1773, Ls.11-20.) "Stippling" describes the small abrasions where gunpowder impacts the skin (Tr., p.1775, Ls.1-

[2] The sequence of the shots fired is important in that the State theorizes that Mr. Hall shot Mr. Corrigan twice before turning the gun on himself. (Tr., p.2572, Ls.15-24.) The State had to rely upon these lay witnesses because none of the experts testified that the physical evidence supports this theory. *See generally* Tr.

8), and would indicate that a firearm was fired from about four inches to two feet from the gunshot wound (Tr., p.1822, Ls.6-18).

The jury heard that, in the professional opinion of defense expert Dr. Robert Friedman, Mr. Hall had suffered a traumatic brain injury. (Tr., p.2419, Ls.7-17.) Dr. Friedman testified that Mr. Hall had evidence of retrograde and anterograde amnesia as a result of the brain injury.[3] (Tr., p.2423, Ls.10-17.) Detective Durbin, who interviewed Rob at the hospital, described his manner of speech as, "Very, very slow, very dull, sort of thick-tongued. He didn't sound good." (Tr., p.1371, Ls.12-15.) He had been given morphine. (Tr., p.820, Ls.2-4.) Rob told the police that he had been shot in the neck, and that his wife's boss shot him. (Tr., p.791, Ls.12-18.) He also stated that his gun had fallen out of his pocket, that he and Mr. Corrigan fought for the gun, and that he did not know who shot Emmett. (Tr., p.791, L.19 – p.792, L.21.)

Mr. Hall had an Idaho concealed weapon permit, and he carried a weapon with him all the time. (Tr., p.927, L.18 – p.928, L.11.) While he usually carried a Glock handgun (*see* Tr., p.1334, Ls.3-6), Kandi Hall had bought him a Ruger handgun as a Christmas gift several years prior. (Tr., p.927, Ls.8-17.) Officers found the Ruger at the scene. (Tr., p.510, L.3 – p.511, L.6, p.838, Ls.14-20.) A holster was found in Mr. Hall's truck. (Tr., p.1401, L.6 – p.1403, L.5.) There was damage to the plastic housing on the Ruger consistent with it being dropped on pavement. (Tr., p.2286, Ls.9-24.)

Kandi Hall was hysterical when officers arrived and they directed her to sit in a patrol car to get out of the cold. (Tr., p.1004, L.19 – p.1005, L.5.) Over the course of the night, Kandi told the police that she ran into Mr. Corrigan at Walgreens while she was picking up a prescription, went with him to get gas, and met her husband in the parking lot when they

[3] Retrograde amnesia refers to the loss of prior memories because of a brain injury, while anterograde amnesia refers to the inability to lay down new memories after a brain injury. (Tr., p.2420, L.6 – p.2421, L.5.)

returned to Walgreens. (Tr., p.1005, L.23 – p.1006, L.13.) The three talked, and when she turned to leave to get back to her children at home, she heard three gunshots and turned around to find that both Rob and Emmett had been shot. (Tr., p.1007, Ls.5-15.) She told the police that she heard two shots followed by one shot. (Tr., p.1188, Ls.3-10.) In a later interview at the police station, Kandi stated that Rob had confronted Emmett, and that the argument was just verbal. (Tr., p.1013, L.17 – p.1015, L.19.) She related that Emmett was verbally aggressive and challenged Rob to hit him. (Tr., p.1184, Ls.19-25.) She denied having a romantic relationship with Emmett. (Tr., p.1187, Ls.6-10.)

Inside Mr. Corrigan's truck, police found prescription bottles filled in the names of Emmett Corrigan and Jason Blackwell, Emmett's brother, and some of the bottles contained prescription pills. (Tr., p.2097, L.11 – p.2098, L.16.) The pills contained steroids. (Tr., p.2234, L.20 – p.2236, L.17.) Mr. Corrigan's urine tested positive for the presence of amphetamine and the illicit steroids Dianabol and stanozolol. (Tr., p. 2225, Ls.4-25, p.2228, Ls.8-18.)

Mr. Hall was charged by Amended Indictment with one count of first-degree murder, in violation of Idaho Code §§ 18-4001, 18-4002 and 18-4003(a), and one count of use of a deadly weapon during the commission of a crime, in violation of I.C. § 19-2520. (R., pp.236-37.)

After the parties filed various motions, the district court issued a Memorandum Decision and Order Re: Compendium of Motions. (R., pp.1106-39.) Mr. Hall had requested that the district court admit evidence of Mr. Corrigan's Facebook statements indicating his desire to fight a male with whom he had an altercation in February 2011. (Sealed Exs., p.74.) The district court decided that evidence of the Facebook statements would not be admitted "because it is both hearsay evidence and irrelevant pursuant to I.R.E. 403." (R., p.1121.)

Mr. Hall submitted a proposed jury instruction on justifiable homicide, which included a provision based on I.C. § 18-4009(1) stating that a homicide is justifiable if the homicide "was

committed while resisting an attempt to do great bodily injury upon any person, including the defendant." (R., p.1237.) Mr. Hall asserted that subsection (1) of Section 18-4009 covered a different circumstance than the circumstances covered by subsections (2) and (3) of the statute; while subsections (2) and (3) addressed fears of prospective harm, subsection (1) addressed situations where the "'attempt to . . . do great bodily injury' was in progress." (*See* R., pp.1246-48.) He asserted that he was entitled to an instruction on subsection (1) because "[t]he facts are sufficient to allow a reasonable jury to conclude that Mr. Corrigan was in the process of attempting to cause great bodily harm on Mr. Hall." (R., p.1248.)

The case proceeded to a jury trial. (R., pp.1302-06, 1325-32, 1340-49, 1368-78, 1384-90, 1412-23, 1432-40, 1448-54, 1463-67, 1474-76.) The State called Ms. Hall as a witness during its case in chief and questioned her about whether Mr. Corrigan had shoved Mr. Hall and the sequence of gunshots. (Tr., p.891, L.6, p.894, L.1.) The district court later instructed the jury that the evidence of Ms. Hall's prior statements could be considered for the purpose of weighing the credibility of her testimony. (Tr., p.2548, Ls.2-13.)

Along with testimony about the night of the incident, the jury heard testimony from both sides' expert witnesses. Forensic pathologist Dr. Glen Groben had conducted the autopsy on Mr. Corrigan. (Tr., p.1765, Ls.12-15.) Dr. Groben testified that Mr. Corrigan had received two intermediate range gunshot wounds, based on the stippling on the skin and the lack of soot on the body. (Tr., p.1772, L.1 – p.1775, L.16.) Soot only goes a few inches from a fired gun, and would indicate a contact, near contact, or close range gunshot wound. (Tr., p.1773, L.21 – p.1774, L.2.) Intermediate range gunshot wounds involve the weapon being fired relatively close to the target, from within inches to two feet away. (*See* Tr., p.1774, Ls.7-15.)

However, Dr. Groben was unable to determine which of the two gunshot wounds Mr. Corrigan sustained first. (Tr., p.1795, Ls.5-15.) Dr. Groben testified that he could come up

with multiple scenarios where either gunshot was first and the other one was second. (Tr., p.2479, L.22 – p.2480, L.18.) Dr. Groben was also unable to tell, based on the chest entrance wound, what Mr. Corrigan was doing at the time he was shot in the chest. (Tr., p.1796, Ls.4-7.) On Mr. Corrigan's left hand, he saw abrasions on the knuckles which looked fresh. (Tr., p.1847, Ls.15-25.)

Thomas Morgan, who had tested the gunshot residue and gunpowder residue, testified that his muzzle-to-target range determination for the chest gunshot wound was between two and three feet. (Tr., p.1553, L.22 – p.1554, L.5.) The State's blood expert, Tom Bevel, testified that he did not know where a wound was actually sustained based on where the blood drips start, and there was no way to tell based on the blood drips at the scene whether Mr. Hall may or may not have been closer to Mr. Corrigan at the time Mr. Hall was wounded. (Tr., p.1673, L.19 – p.1674, L.8.)

Allison Murtha was also called by the State and testified that gunshot residue hand kits had been collected from Mr. Hall, Ms. Hall and Mr. Corrigan. (Tr., p.1518, Ls.18-24.) Gunshot residue particles were found on the hands of all three of them. (Tr., p.1519, L.9 – p.1520, L.12.) Ms. Murtha told the jury that the particles could have been from the subject discharging a firearm, being in close proximity when a firearm was fired, or coming into contact with something that had gunshot residue on it, and she could not tell conclusively which one of those things happened. (Tr., p.1528, Ls.13-22.)

During the State's case in chief, the State called Joseph Toluse, a certified Use of Deadly Force instructor, as a witness. (Tr., p.1884, L.15 – p.1886, L.3.) Mr. Hall objected to Mr. Toluse's testimony on relevance grounds, and the district court initially sustained the objection. (Tr., p.1890, L.6 – p.1891, L.9.) The State later recalled Mr. Toluse and presented additional evidence that Mr. Hall had taken Mr. Toluse's class for his concealed carry license

application. (Tr., p.2105, L.7 – p.2107, L.25, p.2110, L.14 – p.2111, L.18.) Mr. Hall made a continuing objection to Mr. Toluse's testimony based on "the previously made objection," but the district court overruled the objection. (Tr., p.2113, Ls.9-13.)

Mr. Toluse then testified about the subjects he covered during his concealed carry classes. (Tr., p.2114, L.18 – p.2119, L.25, p.2124, L.1 – p.2129, L.12.) In the middle of the testimony, the district court gave the jury a limiting instruction that it was only to consider the testimony for what Mr. Toluse taught. (Tr., p.2123, Ls.13-23.) Mr. Hall objected to Mr. Toluse's testimony about the requirements for using deadly force and the need to flee from potential threats, on the basis that the testimony was instructing the jury on legal standards, but the district court overruled those objections. (Tr., p.2116, Ls.15-23, p.2127, L.8 – p.2128, L.2.) Mr. Toluse also testified that, "Any firearm should always be carried in some type of holster." (Tr., p.2119, Ls.18-22.)

The jury heard that, in the professional opinion of defense expert Dr. Pablo Stewart, Mr. Corrigan's "behavior in the time leading up to and including March 11, 2011, was due in large part to the steroids and amphetamines that he had been taking." (Tr., p.2244, Ls.11-25.) The consequences included hyperirritability, mood lability, impulsiveness, and explosive temper. (Tr., p.2245, Ls.1-5.)

At the jury instruction conference, the district court offered its own proposed justifiable homicide instruction, which added a provision stating that "the bare fear of such acts is not sufficient unless the circumstances are sufficient to create such a fear in a reasonable person if the defendant acted under the influence of such fears alone." (Tr., p.2502, L.19 – p.2503, L.11.) The State argued that the district court's proposed justifiable homicide instruction "would be confusing because it's really addressing what's already addressed fully in the self-defense instruction." (Tr., p.2503, Ls.19-22.) Mr. Hall asserted "there are different scenarios that the

jury could consider in trying to decide the case." (Tr., p.2504, Ls.11-13.) The district court later decided to withdraw its proposed justifiable homicide instruction, "because I think it is covered in the self-defense instruction. And as I looked at the proposed justifiable homicide instruction, it really was, it was repetitive. It was covered, and I think it's, frankly, less confusing to the jury." (Tr., p.2526, Ls.11-17.)

During jury deliberations, the jury submitted the following question to the district court: "We would like clarification regarding the concealed weapon law. Does the law state how the weapon is to be carried when a person, such as holstered versus not holstered?" (Tr., p.2615, L.22 – p.2616, L.3.) After consulting the parties, the district court gave the following answer: "No, the law does not require a weapon to be holstered." (Tr., p.2619, Ls.14-15.)

At the conclusion of the trial, the jury found Mr. Hall not guilty of first-degree murder, but found him guilty of second-degree murder and found that he personally used a firearm in the commission of the crime. (R., pp.1539-40.)

During the sentencing hearing, the State recommended that the district court impose a life sentence, with a fixed term of thirty-five years. (Tr., p.2690, Ls.19-22.) Mr. Hall asserted that, because he was forty-four years old at the time of sentencing, a thirty-five year fixed sentence would be tantamount to a fixed life sentence. (Tr., p.2694, Ls.9-16.) He recommended that the district court impose a unified sentence of thirty years, with seven and one-half years fixed. (Tr., p.2695, Ls.22-25.) The district court imposed a unified sentence of thirty years, with seventeen years fixed. (R., pp.1693-96.)

Mr. Hall filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., p.24; *see* R., pp.1688-1691.)

ISSUES

1. Did the district court err when it failed to instruct the jury on the law of justifiable homicide pursuant to I.C. § 18-4009(1)?

2. Did the district court err when it instructed the jury that in order for a homicide to be justifiable, the defendant must have believed that the action taken was necessary to save the defendant from the danger presented, and that the defendant may only use an objectively reasonable amount of force, as they are incorrect statements of law?

3. Did the district court abuse its discretion when it excluded Mr. Corrigan's Facebook statements from evidence?

4. Did the district court err when it allowed Mr. Toluse to testify about what he taught in his concealed carry class?

5. Even if the above errors are individually harmless, was Mr. Hall's Fourteenth Amendment Right to Due Process of Law violated because the accumulation of errors deprived him of his right to a fair trial?

ARGUMENT

I.

The District Court Erred When It Failed To Instruct The Jury On The Law Of Justifiable Homicide Pursuant To I.C. § 18-4009(1)

A. Introduction

Since before its founding, Idaho has recognized that the homicide of an assailant who is attempting to commit murder, a felony, or inflict some great bodily injury against any person is justifiable, and the perpetrator of such a homicide cannot be held criminally liable. Mr. Hall asserts that a reasonable jury could conclude from the evidence presented that Mr. Corrigan was presently attempting to cause him great bodily injury, and that he committed a homicide when resisting Mr. Corrigan's actions. Therefore, the district court erred in denying Mr. Hall's request for a justifiable homicide instruction, pursuant to I.C. § 18-4009(1). Furthermore, the State will be unable to prove the error harmless beyond a reasonable doubt.

B. The District Court Erred When It Failed To Instruct The Jury On The Law Of Justifiable Homicide Pursuant To I.C. § 18-4009(1)

A trial court must instruct the jury on all matters of law pertinent to their considerations. *State v. Severson*, 147 Idaho 694, 710 (2009) (citing I.C. § 19-2132). The court must honor a party's request for a specific instruction if that instruction is "'correct and pertinent.'" *Id.* (quoting I.C. § 19-2132). A proposed instruction is correct and pertinent where: (1) it is a correct statement of the law; (2) it is not adequately covered by other instructions; and (3) it is supported by the evidence presented. *See id.* at 710-711 (citing *State v. Olsen,* 103 Idaho 278, 285 (1982)). Mr. Hall requested the court instruct the jury as follows:

> Under the law, homicide is justifiable in anyone of the following three (3) circumstances[:]
>
> . . .

[1] The homicide was committed while resisting an attempt to do great bodily injury upon any person, including the defendant.

(R., p.1237.)[4] Mr. Hall's requested instruction on justifiable homicide was taken directly from Idaho Code § 18-4009(1), omitting only alternative ways in which the homicide would be justifiable. (*Compare* R., pp.1237, 1245-1247 *with* I.C. § 18-4009(1).)

The district court impliedly denied Mr. Hall's requested justifiable homicide instruction by instead proposing its own instruction, which differed significantly from the instruction proposed by Mr. Hall. (Tr., p.2502, L.19 – p.2503, L.11.) The court's proposed instruction included the following language: "the bare fear of such acts is not sufficient unless the circumstances are sufficient to create such a fear in a reasonable person if the defendant acted under the influence of such fears alone." (Tr., p.2503, Ls.7-11.) The court and the parties discussed whether the court's proposed instruction (not Mr. Hall's proposed instruction) was adequately covered in the court's proposed self-defense instruction, and the defense ultimately agreed that the court's two proposed instructions covered the same areas, but the defense never withdrew its proposed instruction.. (Tr., p.2503, L.12 – p.2507, L.3.) The court ultimately refused to give any instruction on justifiable homicide law, finding the law was adequately covered in the self-defense instruction. (Tr., p.2526, Ls.10-17.)

1. Mr. Hall's Proposed Instruction Is A Correct Statement Of The Law

Under any statutory analysis, Mr. Hall's requested instruction was a correct statement of the law. (*See* R., pp.1237-1238, 1245-1249.) Mr. Hall's proposed instruction was taken directly from the language contained in I.C. § 18-4009(1). (*Compare* R., p.1237 *with* I.C. § 18-4009.) "It is not an error to give jury instructions that mirror the language of the statute related to the

[4] Mr. Hall's proposed instruction on justifiable homicide contained a second and third subsection, and he also proposed instructions on other areas of the law. (R., pp.1229-1255.) Mr. Hall does not challenge the district court's ruling on any of his other proposed jury instructions.

crime." *State v. Adamcik*, 152 Idaho 445, 477 (2012) (citing *Holland v. Peterson*, 95 Idaho 728 (1974)). "Homicide is . . . justifiable when committed by any person . . . resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." I.C. § 18-4009(1). Simply put, Idaho law declares that a homicide committed in response to an actual, on-going attempt by a perpetrator to commit serious bodily injury upon the accused is justifiable, and Mr. Hall's requested instruction mirrors Idaho law.

a. By Its Plain Language, I.C. § 18-4009 Distinguishes Between Actions Taken In Response To An Actual, On-Going Violent Attack, And Actions Taken In Response To An Anticipated Violent Attack

"The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent." I.C. § 73-113(1). By its plain language, I.C. § 18-4009(1) states that a homicide committed in response to an actual on-going violent attack against any person is justified. I.C. § 18-4009(1). A person who commits a justifiable homicide cannot be held criminally liable. I.C. § 18-4013.

Idaho Code § 18-4009 describes four scenarios[5] in which a homicide is justified and reads, in its entirety, as follows:

> Homicide is also justifiable when committed by any person in *either* of the following cases:
>
> 1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
>
> 2. When committed in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

[5] Subsection (4) is not relevant to the current appeal.

> 3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,
>
> 4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

I.C. § 18-4009 (emphasis added). By its plain language, the statute describes four *separate* scenarios in which a homicide may be justifiable. *Id.* Subsection (1) describes an actual, on-going attack, has no requirement that the person's actions be reasonable and stem solely from fear. I.C. § 18-4009(1). Any homicide committed in response to an actual "attempt to . . . do some great bodily injury upon any person" is justified, and any person who acts in such a manner cannot be held criminally liable. I.C. §§ 18-4009(1), 18-4013 ("The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged").

Subsection (2) describes an anticipated attack against habitation, property or person ("against one who manifestly intends or endeavors ... against one who manifestly intends and endeavors"), and again has neither a "reasonableness" nor a "fear" requirement within the language of the statute itself. I.C. § 18-4009(2). Subsection (3) also describes an anticipated attack ("imminent danger of such design being accomplished"), but contains a reasonableness requirement ("when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury"), and is not available in all circumstance ("but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed.") I.C. § 18-4009(3).

Idaho Code § 18-4010 modifies subsections (2) and (3) of I.C. § 18-4009 and reads as follows:

> A bare fear of the commission of any of the offenses mentioned *in subdivisions 2 and 3 of the preceding section*, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to *excite the fears of a reasonable person*, and the party killing must *have acted under the influence of such fears alone.*

I.C. § 18-4010 (emphasis added). Thus, where the homicide is committed in response to an anticipated attack as described in I.C. §§ 18-4009(2) or (3), a bare fear of the commission of the offense is not sufficient, the fear must be objectively reasonable, and the killing must have been motivated solely by those objectively reasonable fears. I.C. §§ 18-4009(2)-(3); 18-4010.

Notably, the Idaho legislature specifically omitted from I.C. § 18-4010 the requirement that the defendant be motivated solely by an objectively reasonable fear, or even have any fear at all, when a violent attack is actually occurring. I.C. § 18-4009(1); I.C. § 18-4010. According to the plain, usual and ordinary meaning of the words contained in the statutes at issue, Idaho Code § 18-4009 distinguishes between homicides committed in response to an actual, on-going attack, where there is neither a reasonableness nor a fear requirement, and homicides committed in response to anticipated attacks, where a defendant must be act solely out of an objectively reasonable fear, in order to justify a homicide. I.C. §§ 18-4009, 18-4010.

Because Idaho Code § 18-4009(1) makes it clear that a homicide is justifiable when committed while "resisting any attempt to . . . do some great bodily injury upon any person," Mr. Hall's proposed instruction was a correct statement of the law.

b. Historically, A Homicide Committed In Response To An Actual On-Going Violent Attack Against A Person Has Always Been Justified In Idaho, Regardless Of Whether The Person Who Committed The Homicide Was Afraid And Acted "Reasonably"

A historical review of Idaho law on justifiable homicide quells any doubt about the statute's meaning. "The common law of England, so far as it is not repugnant to, or inconsistent

with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state." I.C. § 73-116. To the extent necessary, Idaho courts may review the common law to determine the meaning of statutes. *See State v. Pina*, 149 Idaho 140, 143 (2010), *abrogated on other grounds by Verska v. St. Alphonsus Regional Medical Center*, 151 Idaho 889 (2011).

According to Blackstone, "such homicide as is committed for the *prevention* of any forcible and atrocious *crime*, is justifiable by the law of nature; and also by the law of England . . . ." 3 T. COOLEY, BLACKSTONE'S COMMENTARIES ON THE LAWS OF ENGLAND, Book IV, p. 180 (3rd ED. Rev. 1884). "If any person attempts a robbery or murder of another ... and shall be killed in such attempt, the slayer shall be acquitted and discharged." *Id.* "For the one uniform principle that runs through our own, and all other laws, seems to be this: That where a crime itself is capital, is endeavored to be committed by force, it is lawful to repel that force by the death of the party attempting." *Id.*

When Idaho became a State, this basic principle was enumerated within the Idaho Constitution itself. Article I, § 1 of the Idaho Constitution reads as follows:

> All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and *defending life and liberty*; acquiring, possessing and protecting property; pursuing happiness and securing safety.

IDAHO CONST. Art.I, § 1 (emphasis added). This section, entitled "Inalienable rights of man," was so uncontroversial that it passed without debate during the Constitutional Convention. PROCEEDINGS AND DEBATES OF THE IDAHO CONSTITUTIONAL CONVENTION OF IDAHO 1889 (L.W. Hart, ed., 1912), p.128. Furthermore, other than being re-numbered numerous times, Idaho's statute on justifiable homicide reads the same today as it read when Idaho's first state legislature decided what constitutes justifiable homicide. *See* Idaho Rev. St. §§ 6570, 6571 (1887); Idaho Rev. Code §§ 6570, 6571 (1908); Comp. Laws of Idaho §§6570, 6571 (1918); Idaho Comp. St.

§§ 8219, 8220 (1919); I.C. §§ 17-1111, 17-1112 (1932); I.C. §§ 18-4009, 18-4010 (1972). In short, Idaho has always distinguished between a homicide committed in response to an on-going violent attack, and a homicide committed in response to an anticipated attack.

c. Idaho Court Decisions Are Not Inconsistent With The Idaho Legislature's Definition Of Justifiable Homicide

Mr. Hall acknowledges that multiple Idaho cases make statements suggesting that justifiable homicide has an element of objective reasonableness in the actions taken or in the purported fear in all circumstances; however, none of those judicial statements are based upon an analysis of I.C. § 18-4009(1) or its predecessors. *See State v. Turner*, 136 Idaho 629, 633-34 (Ct. App. 2001) (citing I.C. § 18-4009(3) (but not I.C. § 18-4009(1)), and *State v. Rodriguez*, 93 Idaho 286 (1969)); *Rodriguez*, 93 Idaho at 291 (citing *State v. Wilson*, 41 Idaho 616, 243 P. 359 (1925)); *State v. Jurko*, 42 Idaho 319, ___, 245 P. 685, 689 (1926) (no citation to Idaho statute); *Wilson* 41 Idaho at ___, 243 P. at 363-364 (citing *State v. Grover*, 35 Idaho 589, 207 P. 1080 (1922)); *State v. Dunlap*, 40 Idaho 630, ___, 235 P. 432, 434 (1925) (no citation to Idaho statute) *Grover*, 35 Idaho at ___, 207 P. at 1083 (no citation to Idaho statute); *State v. Fleming*, 17 Idaho 471, ___, 106 P. 305, 309-310 (1910) (citing Id. Rev. Code § 6570(2)-(3) (but not Id. Rev. Code § 6570(1))); *State v. McGreevey*, 17 Idaho 453, ___, 105 P. 1047, 1051 (1909) (no citation to Idaho statute). These court decisions make broad declarations about Idaho's justifiable homicide law, without actually analyzing the words contained in I.C. § 18-4009(1) and its predecessors.

To the extent that these cases could be viewed as attempts to define the law of justifiable homicide, they are inconsistent with an Idaho Supreme Court decision that preceded all of them, and which actually relies upon the language contained in I.C. § 18-4009(1)'s predecessor. In *State v. Crea*, 10 Idaho 88, 76 P. 1013 (1904), the Court reversed a manslaughter conviction finding the following instruction to be incorrect: "there must have been shown by the evidence

to have been a serious and highly provoking injury inflicted upon the person killing . . . or an attempt by the person killed to commit a serious injury on the person killing." *Id.* 76 P. at 1017. The Court relied upon Idaho Rev. Stat. § 6570(1), (3) (1887), the verbatim predecessor to I.C. § 18-4009(1), (3), and found that "the vice of the instruction is in charging that one who kills another while resisting an attempt to commit a serious injury on his person is guilty of manslaughter, when as a matter of fact such killing would be justifiable." *Id.* In other words, no showing of a "serious and highly provoking injury on the person killing" is required when one commits a homicide in defense of any person actually suffering an attempt to commit serious bodily injury upon them. Rather than making the law itself, the *Crea* Court interpreted the law passed by the duly elected state legislature.

d. Idaho Code §§ 18-4009 and 18-4010 Cannot Be Interpreted As Requiring An Objectively Reasonable Fear Element Without Rendering All Or Portions Of Those Statutes Null

"If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored." I.C. § 73-113(2). In order for this Court to interpret I.C. § 18-4009 to limit homicides which are justifiable to only those where there is an objectively reasonable fear, this Court would either have to, in essence, delete subsection (1) from I.C. § 18-4009, delete the portion of I.C. § 18-4010 that references I.C. §§ 18-4009(2) and (3), or both.

As noted above, the plain language of I.C. § 18-4009(1) has no requirement that the defendant be acting solely out of fear, let alone that the fear be objectively reasonable. *See* I.C. § 18-4009(1). Idaho Code § 18-4010 specifically references "subdivisions 2 and 3 of the preceding section" and requires that where a defendant claims a homicide is justifiable in those situations, "the circumstances must be sufficient to excite the fears of a reasonable person, and

the party killing must have acted under the influence of such fears alone." I.C §18-4010. The only way to read these two statutes together and conclude that an objectively reasonable fear be present in every circumstance, is to imagine that I.C. § 18-4009(1), or the language "subdivisions 2 and 3" in I.C. § 18-4010, are not actually contained in the statutes. This, of course, is absurd and would result in rendering those portions of the statutes a nullity. Idaho courts do not possess the authority to amend Idaho statutes in this manner.

e. This Court Does Not Possess The Constitutional Authority To Amend Idaho's Justifiable Homicide Laws

It is quite possible that Idaho citizens would no longer find a homicide committed "when resisting any attempt to ... commit a felony," to be justifiable, absent an objectively reasonable fear of serious bodily injury on the part of the person committing the homicide. At the time the justifiable homicide statute was first adopted, most felonies were punishable by death and, thus, were consistent with Blackstone's description, "That where a crime itself is capital, is endeavored to be committed by force, it is lawful to repel that force by the death of the party attempting." Blackstone, *supra* at 180; *see also Pina*, 149 Idaho at 145 (citing *People v. Aaron*, 409 Mich. 672, 299 N.W.2d 304, 310 (1980)). California state courts recognized this problem and, by judicial fiat, re-wrote California's identical justifiable homicide law. *People v. Ceballos*, 526 P.2d 241, 245 (Cal. 1974); Cal. Penal Code § 197.

However, regardless of whether or not judges in California are permitted to re-write California statutes they find undesirable, it is axiomatic that Idaho courts are not. Idaho courts interpret the laws passed by the Idaho legislature – they do not enact laws. *See State v. Jones*, 154 Idaho 412, 418 (2013). The power to correct a socially or otherwise unsound statute lies with the legislature, not the judiciary. *Verska*, 151 Idaho at 892-893 (2011). This Court cannot amend I.C. § 18-4009 and/or I.C. § 18-4010 without violating the most basic principle of separation of powers.

Furthermore, Mr. Hall's proposed jury instruction omitted language referencing a felony instructing that a homicide is justifiable if it "was committed while resisting an attempt to do great bodily injury upon any person, including the defendant." (R., p.1237.) His proposed instruction omitted language declaring that a homicide committed in defense of a person suffering a felony at the hands of another is justified. (R., p.1237.) Thus, even if this Court were to somehow determine that it has the power to amend the statute on its own to reflect what it perceives would be the will of the people, there is no reason to believe that the citizens of Idaho would require a person who commits a homicide while resisting an actual, on-going attempt by a perpetrator to inflict serious bodily injury upon them, to have an objectively reasonable fear, and to act only out of that fear.

For the reasons noted above, Mr. Hall's proposed justifiable homicide instruction was a correct statement of Idaho law.

2. Mr. Hall's Proposed Justifiable Homicide Instruction Was Not Adequately Covered By Other Instructions

The district court's finding that Mr. Hall's proposed justifiable homicide instruction was adequately covered by the self-defense instruction given is erroneous. The court provided Jury Instruction 33, which reads as follows:

> A homicide is justifiable if the defendant was acting in self-defense.
>
> In order to find that the defendant acted in self-defense, all of the following conditions must be found to have been in existence at the time of the killing:
>
> 1. The defendant must have believed that the defendant was in imminent danger of death or great bodily harm.
>
> 2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.
>
> 3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant was in imminent

danger of death or great bodily injury and believed that the action taken was necessary.

4. The defendant must have acted only in response to that danger and not for some other motivation.

5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

(R., pp.1519-1520.) This instruction is insufficient for multiple reasons.

First, the jury was instructed that it must find "the defendant *must have believed* that the defendant was *in imminent danger* of death or great bodily harm." (R., p.1519 (emphasis added)). Unlike Mr. Hall's proposed instruction, this instruction simply does not apply to circumstances where the defendant is actually suffering "an attempt to do great bodily harm" (*see* I.C. § 18-4009(1)); rather, it applies only where the defendant believes an attack is imminent (*see* I.C. § 18-4009(2)). (*See* R., p.1237.) Second, the instruction requires "that the action the defendant took was necessary to save the defendant from danger." (R., p.1519.) Neither Mr. Hall's proposed instruction nor I.C. § 18-4009 have this requirement.[6] (R., p.1237; *see also* I.C. § 18-4009(1).) Third, the court's instruction applies an objectively reasonable fear requirement. (R., p.1519.) Again, neither Mr. Hall's proposed instruction nor I.C. § 18-4009(1)

[6] Additional problems with this instruction are discussed in Section II of this brief below.

have this requirement. (R., p.1237; *see also* I.C. § 18-4009(1).) Fourth, the court's instruction requires that the defendant act only in response to the objectively reasonable fear and again, neither Mr. Hall's proposed instruction nor I.C. § 18-4009(1) have this requirement (R., pp.1237, 1519; *see also* I.C. § 18-4009(1).) Finally, the court instructed the jury that "[w]hen there is no longer any reasonable appearance of danger, the right of self defense ends." (R., p.1519.) As with the rest of the instruction, neither Mr. Hall's proposed instruction nor I.C. § 18-4009(1) have this requirement. (R., p.1237; *see also* I.C. § 18-4009(1).)

Jury Instruction 34 further compounds the harm caused by the court's failure to provide Mr. Hall's proposed instruction. Jury Instruction 34 reads,

> The kind and degree of force which a person may lawfully use in self-defense are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.[7]

(R., p.1521.) Idaho Code § 18-4009(1) has no requirement that the individual act in an objectively reasonable manner, using only the force a jury would think is allowable, in order for a homicide committed in response to an actual physical attack upon them to be justifiable.

In sum, the district court's instructions does not adequately apprise the jury of the law of justifiable homicide as codified in I.C. § 18-4009(1), as Mr. Hall had requested through his proposed jury instruction. Rather than correctly describing Idaho's justifiable homicide law, as will be demonstrated in Section II of this brief below, the district court's instruction actually further misstated the law.

[7] Additional problems with this instruction are also discussed in Section II of this brief below.

3. The Evidence Presented Justified Mr. Hall's Proposed Instruction

The jury could have concluded, based upon the evidence presented, that Mr. Corrigan attacked Mr. Hall attempting to inflict serious bodily injury upon him, and that Mr. Hall shot and killed Mr. Corrigan in response to this attack. The jury heard testimony that on the night of the incident, Rob Hall was sad, but not angry, while Emmett Corrigan was angry and actually threatened to "crack" Mr. Hall's "fucking head." (Tr., p.873, L.13 – p.875, L.3, p.945, Ls.3-9, p.933, L.23 – p.934, L.7, 1258, L.23 – p.162, L.11, p.1330, Ls.11-17, p.2457, L.23 – p.2459, L.18; State's Ex. 77A.) Kandi Hall testified that Emmett Corrigan pushed Rob Hall immediately before the ultimately deadly confrontation occurred and that Rob did not push back. (Tr., p.881, L.23 – p.882, L.4.) Most importantly, there was simply no evidence presented that would counter the claim, definitively or otherwise, that Mr. Corrigan physically attacked Mr. Hall, and that the homicide was committed in response to Mr. Corrigan's actual, ongoing attempt to inflict serious bodily injury upon him. Thus, the evidence presented justified Mr. Hall's proposed instruction.

C. The State Will Be Unable To Prove That The Court's Failure To Give Mr. Hall's Justifiable Homicide Instruction Is Harmless Beyond A Reasonable Doubt

Where alleged error is followed by a contemporaneous objection and the appellant shows that a violation occurred, the State bears the burden of proving the error was harmless beyond a reasonable doubt, based upon the test articulated by the United States Supreme Court in *Chapman v. California*, 386 U.S. 18 (1967). *See State v. Perry*, 150 Idaho 209, 227 (2010). "To hold an error as harmless, an appellate court must declare a belief, beyond a reasonable doubt, that there was no reasonable possibility that such evidence complained of contributed to the conviction." *State v. Sharp,* 101 Idaho 498, 507 (1980) (citing *Chapman*, 386 U.S. at 24).

The physical evidence does not, in any way, make clear what transpired in the Walgreens parking lot on the night of March 11, 2011. The State's experts could not give definitive

answers to the sequences of shots (Tr., p.1795, Ls.5-15, p.2479, L.22 – p.2480, L.18), or even who fired the gun[8] (Tr., p.1518, L.18 – p.1528, L.22). The State's theory that Rob Hall shot Emmett Corrigan twice before shooting himself is belied by the fact that there was no evidence that Rob Hall shot himself, i.e., there was no evidence of stippling or singed hair, which are both signs of a contact or near contact gunshot wound. (*See* Tr., p.821, L.20 – p.822, L.14, p.1373, L.16 – p.1375, L.11, p.1773, L.11 – p.1775, L.8.) The jury clearly rejected the State's theory that Rob Hall's actions were premeditated as shown by the fact that they acquitted him of first degree murder. (R., pp.1539-1540.) In light of the evidence presented showing that on the night of the incident Rob Hall was sad but calm, while Emmett Corrigan was angry, threatening, and specifically drove to the Walgreens looking for Mr. Hall as mentioned in Section I(B)(3) above, as well as the lack of physical evidence supporting the State's theory, the State will be unable to prove, beyond a reasonable doubt, that had the jury been given Mr. Hall's proposed justifiable homicide instruction, it would not have found the homicide to be justifiable.

II.

The District Court Erred When It Instructed The Jury That In Order For A Homicide To Be Justifiable, The Defendant Must Have Believed That The Action Taken Was Necessary To Save The Defendant From The Danger Presented, And That A Defendant May Only Use An Objectively Reasonable Amount Of Force, As Both Are Incorrect Statements Of Law

A. Introduction

As part of Instruction No. 33, the "self-defense" instruction, the district court told the jury that in addition to believing that he was in imminent danger, Mr. Hall "must have believed that the action [he] took was necessary to save [him] from the danger presented." (R., p.1519.) Furthermore, in Instruction No. 34, the district court told the jury that a defendant can only use an objectively reasonable amount of force in order for a homicide to be justifiable. (R., p.1521.)

[8] It is, of course, undisputed that Mr. Corrigan did not shoot himself.

Both of these instructions misstate Idaho's justifiable homicide law, which has neither a requirement that the defendant believe that the actions he took were necessary to save him from any danger presented, nor a requirement that the defendant use only an objectively reasonable amount of force. Mr. Hall did not object to these instructions. However, he asserts that these instructions lowered the State's burden of proof thus violating his constitutional right to due process, that the errors are plain on the face of the record, and that there is a reasonable possibility that the errors affected the outcome of the trial.

B. Justifiable Homicide Under Idaho Law Requires Neither That The Defendant Believe His Actions Were Necessary To Protect Against The Danger Presented, Nor That The Defendant Use No More Than An Objectively Reasonable Amount Of Force

As noted above, Idaho's law on justifiable homicide is found at I.C. §§ 18-4009 and 18-4010. Idaho Code § 18-4009 reads as follows:

> Homicide is also justifiable when committed by any person in either of the following cases:
>
> 1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
>
> 2. When committed in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
>
> 3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,
>
> 4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

I.C. § 18-4009. Idaho Code § 18-4010 reads,

> A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

I.C. § 18-4010. By the plain, ordinary and usual meaning of the words in these statutes (*see* I.C. § 73-113(1)), nothing in these sections require the defendant to believe that the actions taken were necessary to save the defendant from the danger presented.

However, the district court provided Jury Instruction No. 33, which reads, in relevant part, as follows:

> A homicide is justifiable is the defendant was acting in self-defense. In order to find that the defendant acted in self-defense, all of the following conditions must have been in existence at the time of the killing:
>
> 1. The defendant must have believed that the defendant was in imminent danger of death or great bodily harm.
>
> 2. *In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.*
>
> . . .
>
> The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

(R., pp.1519-1520 (emphasis added.).) The portion of this instruction telling the jury that Mr. Hall must have believed that his actions were necessary to save him from the danger presented by Mr. Corrigan, in order for the homicide to be justifiable, is an incorrect statement of law which lowered the State's burden of proof. Simply put, there is nothing in I.C. §§ 18-4009 and 18-4010 that states that a homicide is only justifiable if the defendant had the subjective belief that the actions he took were necessary to protect against the danger presented.

The district court also provided in Jury Instruction No. 34, which reads,

> The kind and degree of force which a person may lawfully use in self-defense are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

(R., p.1521.) Again, there is nothing in I.C. §§ 18-4009 and 18-4010 that states that a defendant may only use the amount of force "a reasonable person in the same situation" would feel is necessary, nor that a homicide may not be justifiable if jurors later decide that the defendant used an excessive amount of force. In short, these instructions incorrectly state Idaho's justifiable homicide law.

C. Jury Instructions 33 and 34 Constitute Fundamental Error Under The Facts Of This Case

This Court may review un-objected to jury instructions under Idaho's fundamental error rule. *State v. Adamcik*, 152 Idaho 445, 472-473 (citing *State v. Johnson*, 145 Idaho 970 (2008)). "The *Perry* fundamental error test requires the defendant to show three things: (1) the alleged error violated an unwaived constitutional right; (2) the alleged error plainly exists; and (3) the alleged error was not harmless." *Id.* at 473 (citing *Perry,* 150 Idaho at 228). For the reasons stated below, Mr. Hall asserts that instructing the jury that in order for the homicide to have been justifiable that he must have believed his actions were necessary to save himself from the dangers presented by Mr. Corrigan, and that he must use only an objectively reasonable amount of force were legally erroneous, and that the errors were fundamental.

1. The Instruction Lowered The State's Burden Of Proof; Thus, The Instruction Violated Mr. Hall's Constitutional Right To Due Process Of Law

A criminal defendant's right to a fair trial is protected by the due process clause of the Fourteenth Amendment and Article I, § 13 of the Idaho Constitution. U.S CONST. amd XIV; ID. CONST art. 1 § 13. The Idaho Court of Appeals has observed,

> An erroneous instruction that relieves the State of its burden to prove an element of a charged crime can be characterized as either a violation of due process, *State v. Draper,* 151 Idaho 576, 588, 261 P.3d 853, 865 (2011); *State v. Anderson,* 144 Idaho 743, 749, 170 P.3d 886, 892 (2007); *see also Sullivan v. Louisiana,* 508 U.S. 275, 278, 113 S.Ct. 2078, 2080–81, 124 L.Ed.2d 182, 188–89 (1993); or as a violation of the Sixth Amendment's jury trial guarantee. *Neder v. United States,* 527 U.S. 1, 12, 119 S.Ct. 1827, 1835, 144 L.Ed.2d 35, 48–49 (1999); *Sullivan,* 508 U.S. at 277–78, 113 S.Ct. at 2080–81, 124 L.Ed.2d at 187–88.

State v. Parsons, 153 Idaho 666, 669 (Ct. App. 2012). In order to prove that Mr. Hall committed either first degree murder, or one of the lesser included offenses, the State was required to prove both that Mr. Hall killed Mr. Corrigan, and that the homicide was not justifiable. *See* I.C. §§ 18-4001, 18-4003, 18-4006, 18-4009.

These instructions appear to be an amalgamation of Idaho's justifiable homicide law and Idaho's non-homicide self-defense law. Idaho Code §§ 18-4009 and 18-4010 describe Idaho's justifiable laws. In contrast, Idaho Code §§ 19-201 to 19-203 codifies what constitutes "lawful resistance" in non-homicide cases. These statutes make clear that a person may lawfully resist the commission of a "public offense" (I.C. § 19-201), that the party resisting may use as much resistance as is necessary to prevent the offense against his person or family, or to prevent an illegal, forceful attempt to take or injure his property (I.C. § 19-202), that a person may not be put in legal jeopardy for protecting himself or a family member by reasonable means, or when coming to the aid of another he reasonably believes to be in imminent danger of a heinous crime (I.C. § 19-202A), and that any other person may "make resistance sufficient" to prevent an offense against any person (I.C. § 19-203).

However, the Idaho Supreme Court long ago observed that instructions based upon I.C. §§ 19-202 and 19-203 are not correct statements of the law of self-defense in a homicide case; rather, "[t]he law relevant to self-defense in a homicide case is I.C. § 18-4009." *State v. Rodriguez*, 93 Idaho 286, 290-291 (1969). The jury instructions at issue lowered the State's

burden of proof. While the instructions given by the court may accurately state the law where a defendant is charged with a non-homicide and claims that he or she acted in self defense, they are simply not accurate in explaining Idaho's law on justifiable homicide.

In Jury Instruction 33, the court told the jury that justifiable homicide requires "all of the following conditions" to be have been in existence at the time of the killing, and that the State need only disprove one of the conditions in order to demonstrate that the homicide was not justifiable. (R., pp.1519-1520.) Allowing the State to disprove anything that is not actually a part of the law of justifiable homicide is the equivalent of not requiring the State to prove the homicide was not justifiable at all. For example, had the jury been instructed that in order for a homicide to have been justifiable, it must have been committed on a Monday, the State could prove that the homicide was not justifiable if it was committed on a Tuesday. Neither the day on which the homicide occurred, nor the defendant's belief that his actions were necessary to meet the danger presented are required for a homicide to be justifiable under Idaho law. Therefore, the ability of the State to disprove the homicide was justifiable by proving that Mr. Hall did not believe that his actions were necessary to save him from the danger Mr. Corrigan presented violated Mr. Hall's Constitutional right to Due Process of Law.

The court giving Jury Instruction 34 is even more Constitutionally infirm under the facts of this case. As noted above, Idaho law has no requirement that in order for a homicide to be justifiable, "[t]he kind and degree of force which a person may lawfully use . . . are limited by what a reasonable person in the same situation . . . would believe to be necessary." (*Compare* I.C. §§ 18-4009, 18-4010 *with* R., p.1521.) However, this instruction allows the State to prove the homicide was not justifiable if the jurors found that they would have done something different. Even if the jury found that Mr. Hall was actually defending himself from

Mr. Corrigan's attack, the instruction requires the jury to find him guilty if they found he used a little too much force. (R., p.1521.)

Mr. Hall's Constitutional right to Due Process was violated both by Jury Instructions 33 and by Jury Instruction 34.

2. The Instructional Error Is Plain On Its Face

The instructional errors in this case are plain on their face, and there is no reason to believe that Mr. Hall's counsel were "sandbagging" the district court by failing to object to Instructions 33 and 34. It appears that the district court simply took the jury instructions from Idaho's uniform criminal jury instructions. (*Compare* R., pp.1519-1521 *with* I.C.J.I. 1517; I.C.J.I. 1518.) To the same extent that the district court could be excused for incorrectly relying upon the uniform criminal jury instructions, Mr. Hall asserts that his counsel should be excused for failing to object to these instructions. Regardless, the errors in question are matters of law, not of fact, and are clear from the face of the record, and there is no basis to conclude that Mr. Hall's counsel knew the jury instructions at issue were incorrect but chose not to object. Therefore, the instructional errors are plain on their face.

3. The Instructional Errors Are Not Harmless

Because Mr. Hall did not object to the instructions during trial, he bears "the burden of proving there is a reasonable possibility that the error[s] affected the outcome of the trial." *Perry*, 150 Idaho at 226. Mr. Hall asserts that there is a reasonable possibility that the instructional error in this case affected the outcome of his trial. In addition to the reasons Mr. Hall asserts the State cannot prove the error harmless beyond a reasonable doubt as argued in Section I(C) of his brief above, the errors in Instructions 33 and 34 in essence relieved the State of its burden of showing the homicide was unlawful. During its closing argument, the State argued "We're not here to ask you to like Emmett Corrigan. . . . We're asking you to decide that

he didn't deserve to die." (Tr., p.2609, L.23 – p.2610, L.3.) The court erroneously instructed the jury that Mr. Hall must have reasonably believed that his actions were necessary to save himself and that, even if he was acting in self-defense, he could still be found guilty if the jury believed Mr. Hall should have used a lesser degree of force. The jurors were told to find the homicide not justified if they believed Mr. Hall should have taken some lesser action, such as shooting to scare or shooting to wound. Had the jurors decided that Mr. Corrigan did not "deserve to die," as the State asked them to find, the jurors could have concluded that Mr. Hall's actions went "too far" and he was guilty of murder. Idaho's justifiable homicide law does not allow for the jury to find that a person acted in self-defense, but second-guess the degree of force the person used in that defense. As such, there is a reasonable possibility that the errors contained in the jury instructions contributed to the jury finding Mr. Hall guilty of second degree murder.

III.

The District Court Abused Its Discretion When It Excluded Mr. Corrigan's Facebook Statements From Evidence

A. Introduction

Mr. Hall asserts that the district court abused its discretion when it excluded Mr. Corrigan's Facebook statements from evidence, because it did not act consistently with the applicable legal standards. The district court excluded the Facebook statements finding they were "hearsay" and "irrelevant pursuant to I.R.E. 403." (R., p.1121.) But the Facebook statements fit within the "state of mind" exception to the hearsay rule, and were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. Further, the probative value of the Facebook statements was not outweighed by the possibility of unfair prejudice. Thus, the Facebook statements should have been admitted into evidence.

Mr. Hall requested the admission of Mr. Corrigan's "statements on Facebook indicating his desire to fight a male whom Corrigan had an altercation on or about the middle of February

2011, and indicating that Corrigan's physical presence caused fear and apprehension in the male." (Sealed Exs., p.74.) In February and March 2011, Mr. Corrigan made the following relevant Facebook statements:

> Nothin better than having someone try and call you out and when it comes go time they end up pissing their pants and not wanting any part of what they started
> February 25 at 4:36 am
>
> Yeah Bro! Mine happened last week. Apparently they talk talk talk smack in Cali.[9] Here in Idaho talk is cheap. Throwin down settles it once and for all!!
> February 25 at 4:41 am
>
> "Amen" Brotha. I do have Cali buddies who are tough as nails (yeah you DC) but they treat women with respect. Abuse a woman like my guy does and I will come to your house! Once he has someone his own size he doesn't feel like being violent anymore!
> Feburary 25 at 4:58 am
>
> So sad seeing people get manipulated by people who abuse, lie and cheat . . .
> March 7 at 8:59 pm
>
> I would kick their ass, but they are too scared to throw down . . . LOL!!!! Next time I'll film it for ya!!
> March 10 at 9:19 am

(Sealed Exs., pp.74, 115.)

Regarding the admissibility of the Facebook statements, the district court stated, "This email does not specify who the 'male' is that Corrigan is referring to and is highly speculative that this desire pertained to the Defendant. Therefore this evidence will not be admitted because it is both hearsay evidence and irrelevant pursuant to I.R.E. 403." (R., p.1121.) However, the Facebook statements should have been admitted because they fit under the "state of mind" exception to the hearsay rule and were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor.

[9] Mr. Hall was from California. (*See* PSI, p.14.)

B. Standard Of Review And Applicable Law

An appellate court reviews a district court's decision to admit or exclude evidence under a hearsay exception for abuse of discretion. *State v. Moses*, 156 Idaho 855, ___, 332 P.3d 767, 779 (2014). When reviewing a trial court's discretionary decision, an appellate court conducts a multi-tiered inquiry into (1) whether the trial court correctly perceived the issue as one of discretion, (2) whether the trial court acted within the outer bounds of such discretion and consistently with legal standards applicable to specific choices, and (3) whether the trial court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

"Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." I.R.E. 801(c). Hearsay is generally not admissible. I.R.E. 802.

The "state of mind" exception to the hearsay rule provides that the following is not excluded by the hearsay rule:

> Then Existing Mental, Emotional, or Physical Condition. A *statement of the declarant's then existing* state of mind, emotion, sensation, or physical condition (such as *intent*, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

I.R.E. 803(3) (emphasis added).

C. The District Court Abused Its Discretion When It Excluded The Facebook Statements From Evidence, Because It Did Not Act Consistently With The Applicable Legal Standards

Mr. Hall submits that the district court abused its discretion when it excluded the Facebook statements from evidence, because it did not act consistently with the applicable legal standards. The Facebook statements fit within the "state of mind" exception to the hearsay rule, and were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. Further, the probative value of the Facebook statements was not outweighed

by the possibility of unfair prejudice. Thus, the Facebook statements should have been admitted into evidence.

1. The Facebook Statements Fit Within The "State Of Mind" Exception To The Hearsay Rule

The Facebook statements fit within the "state of mind" exception to the hearsay rule. The Facebook statements, while hearsay, fit within the state of mind exception because they were statements of Mr. Corrigan's then existing intent to be the aggressor in a future confrontation with Mr. Hall. *See State v. Ransome*, 467 S.E.2d 404, 407-08 (N.C. 1996) (holding that North Carolina Rules of Evidence 803(3) "allows the admission of a hearsay statement of a then-existing intent to engage in a future act").

It appears that whether Rule 803(3) allows for the admission of a hearsay statement of a then existing intent to engage in a future act is a question of first impression in Idaho. Cases from the United States Supreme Court and Idaho Supreme Court, predating the adoption of Rule 803(3) in 1985, are instructive.

In *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892), life insurance companies defended against the enforcement of a life insurance policy by claiming that the insured, Mr. Hillmon, was not dead but in hiding as part of a conspiracy to defraud the companies, and that the supposed body of Mr. Hillmon was actually that of a Mr. Walters. *Id.* at 285-87. On appeal, the United States Supreme Court reversed the verdict for the plaintiff-beneficiary and remanded the case for a new trial, holding the lower court erroneously excluded from evidence letters written by Mr. Walters to his sister and fiancée. *Id.* at 294-300. One of the letters stated, "I expect to leave Wichita on or about March the 5th with a certain Mr. Hillmon, a sheep trader, for Colorado, or parts unknown to me." *Id.* at 288. Although the plaintiff-beneficiary had argued that the letters were inadmissible hearsay, *id.* at 287, the Court held that "whenever the

intention is of itself a distinct and material fact in a chain of circumstances, it may be proved by contemporaneous oral or written declarations of the party." *Id.* at 295.

The Idaho Supreme Court applied the so-called *Hillmon* doctrine in *State v. Muguerza*, 46 Idaho 456, 268 P. 1 (1928). In *Muguerza*, the defendant in an assault with a deadly weapon case argued that the district court erred in overruling her objections to questioning a witness, one Carlson, about the complaining witness's statements that he did not want to see the defendant if she tried to visit him at the hospital. *Id.* at ___, 268 P. at 2. "In admitting this testimony, the court limited it to show the attitude of mind of the prosecuting witness towards appellant, she having testified and offered other testimony tending to show a friendly state of mind on the part of the prosecuting witness . . . ." *Id.* at ___, 268 P. at 2. While "the questions may have been objectionable as calling for hearsay," the Court did "not feel justified in holding that the overruling of the objections amounted to prejudicial error." *Id.* at ___, 268 P. at 2. Citing *Hillmon*, the Court stated that "[t]here are authorities holding such declarations admissible as original and competent evidence, wherever the mental feelings of an individual are material to be proved." *Id.* at ___, 268 P. at 2. "The existence of the true state of feeling of the prosecuting witness towards appellant became a relevant fact by the introduction of testimony on her behalf that he exhibited a friendly feeling toward her after the shooting, and the questions asked the witness Carlson were to repel that inference." *Id.* at ___, 268 P. at 2.

This Court should hold that Idaho Rule of Evidence 803(3) embraces the *Hillmon* doctrine. The exception to the hearsay rule set forth in *Hillmon* and *Muguerza* is now codified in the Federal Rules of Evidence. The Commentary to Federal Rule of Evidence 803(3) expressly embraces a modified version of the *Hillmon* doctrine as part of the federal state of mind exception to the hearsay rule. Advisory Committee Note on Para. (3) of F.R.E. 803(3) (1972) ("The rule of [*Hillmon*], allowing evidence of intention as tending to prove the doing of the act

intended, is, of course, left undisturbed."); Advisory Committee Note on Para. (3) of F.R.E. 803(3) (1974) ("[T]he Committee intends that the Rule be construed to limit the doctrine of [*Hillmon*], so as to render statements of intent by a declarant admissible only to prove his future conduct, not the future conduct of another person."). The language of Idaho Rule of Evidence 803(3) is substantially similar to the language in Federal Rule of Evidence 803(3), and the Idaho rule should also be read to embrace the *Hillmon* doctrine. *See State v. McElrath*, 366 S.E.2d 442, 452 (N.C. 1988) ("North Carolina Rule of Evidence 803(3) is identical to its federal counterpart and, therefore, should also be read to embrace the rule announced in the *Hillmon* case and applied in this Court's own decisions.").

Further, the Idaho Supreme Court has observed that, "While the Idaho Rules of Evidence were not adopted until 1985, the 'state of mind' exception existed under common law rules of evidence used in Idaho in nearly identical form to I.R.E. 803(3); thus, the analysis remains similar." *State v. Shackelford*, 150 Idaho 355, 364 n.3 (2010). Statements of then existing intent to engage in a future act should therefore be analyzed under Rule 803(3) using an analysis similar to the *Hillmon* doctrine analysis used in *Muguerza*. The *Muguerza* Court endorsed the district court's limiting of the *Hillmon* doctrine evidence "to show the attitude of mind of the prosecuting witness [declarant] towards appellant," *see* 46 Idaho at ___, 268 P. at 2, much like Federal Rule of Evidence 803(e) limits the *Hillmon* doctrine "so as to render statements of intent by a declarant admissible only to prove his future conduct." *See* Advisory Committee Note on Para. (3) of F.R.E. 803(3) (1974). *Shackleford* indicates that Rule 803(3) embraces a similar *Hillmon* doctrine analysis.

In light of the *Hillmon* doctrine, its use in *Muguerza*, and its embrace by Rule 803(3), the Facebook statements fit within the state of mind exception to the hearsay rule because they were statements of Mr. Corrigan's then existing intent to be the aggressor in a future confrontation

with Mr. Hall. "Limited circumstances exist in which statements made by a murder victim to a third party are admissible under I.R.E. 803(3)'s state of mind exception to the hearsay rule." *Shackelford*, 150 Idaho at 364. "The statements may be admitted only after a determination that (1) the declaration is relevant, and (2) the need for and value of such testimony outweighs the possibility of prejudice . . . ." *Id.*

2. The Facebook Statements Were Relevant

The district court erred when it determined that the Facebook statements were not relevant. The Facebook statements were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. Whether evidence is relevant is a question of law that an appellate court reviews *de novo*. *State v. Joy*, 155 Idaho 1, 6 (2013). "All relevant evidence is admissible except as otherwise provided by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible." I.R.E. 402. The Idaho Rules of Evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I.R.E. 401. "Whether a fact is 'of consequence' or material is determined by its relationship to the legal theories presented by the parties." *Shackelford*, 150 Idaho at 364 (quoting *State v. Yakovac*, 145 Idaho 437, 444 (2008)).

The Idaho Supreme Court has recognized that a declarant-victim's state of mind is relevant because of its relationship to the legal theories presented by the parties "when the defendant claims self-defense as justification for the killing." *Id.* (citing *State v. Goodrich*, 97 Idaho 472, 477 n.7 (1976)). "[W]hen examining relevancy, we look to whether the fact that the statement was made is relevant to a legal theory presented by the parties." *Id.* at 365.

Mr. Corrigan's Facebook statements were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. Mr. Hall's theory of the case was that

he acted in self-defense because Mr. Corrigan was the first aggressor. (*See, e.g.*, Tr., p.2598, Ls.6-7, 17-19.) The Facebook statements indicate that Mr. Hall was the "male" described in the statements. In one of the February 25, 2011 statements, Mr. Corrigan wrote, "Mine happened last week," (Sealed Exs., p.115), suggesting his confrontation with the male occurred in late February, which is when Mr. Corrigan confronted Mr. Hall at the Halls' house. (*See* Tr., p.851, L.14 – p.857, L.7, p.1242, L.6 – p.1244, L.23.) Mr. Corrigan also stated, "Abuse a woman like my guy does," and, "So sad seeing people get manipulated by people who abuse, lie and cheat . . . ." (Sealed Exs., p.115.) Those statements further indicate that Mr. Corrigan's statements were about Mr. Hall, because Mr. Corrigan believed that Mr. Hall was abusive to Ms. Hall (*See* Tr., p.1238, Ls.3-20, p.1244, L.24 – p.1245, L.1, p.1299, L.2 – p.1300, L.3).

The Facebook statements also indicate that Mr. Corrigan had a then existing intent to be the aggressor in a future confrontation with Mr. Hall. On February 25, he wrote, "I will come to your house!" (Sealed Exs., p.115.) That statement suggests that Mr. Corrigan intended to again confront Mr. Hall at the Halls' house. On March 10, one day before the incident at Walgreens, Mr. Corrigan stated with respect to the "people who abuse, lie, and cheat" that "I would kick their ass . . . . Next time I'll film it for ya!" (Sealed Exs., p.115.) That statement indicates that Mr. Corrigan intended to be the aggressor in a future confrontation with Mr. Hall. Thus, Mr. Corrigan's Facebook statements were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. *See* I.R.E. 401; *Shackelford*, 150 Idaho at 364-65. The district court erred when it determined that the Facebook statements were not relevant.

3. The Probative Value Of The Facebook Statements Was Not Outweighed By The Possibility Of Unfair Prejudice

The probative value of the Facebook statements was not outweighed by the possibility of unfair prejudice. "As with the admissibility of any piece of evidence, where the probative value

of the statement[s] is substantially outweighed by the danger of unfair prejudice . . . this evidence should be excluded." *Goodrich*, 97 Idaho at 477; *see Shackelford*, 150 Idaho at 364. This essentially requires an analysis of the Facebook statements under Idaho Rule of Evidence 403, which allows for the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." *See* I.R.E. 403. This inquiry does not center on "whether the evidence is harmful to the strategy of the party opposing its introduction," but on whether the evidence "invites inordinate appeal to lines of reasoning outside the evidence or emotions which are irrelevant to the decision making process." *State v. Rhoades*, 119 Idaho 594, 604 (1991).

The probative value of the Facebook statements was not outweighed by the possibility of unfair prejudice, because the Facebook statements do not invite "inordinate appeal to lines of reasoning outside the evidence or emotions which are irrelevant to the decision making process." *See id.* As discussed above, the Facebook statements had a tendency to make it more probable that Mr. Corrigan was the first aggressor. Any prejudice to the State would not be unfair simply because the Facebook statements were harmful to the State's strategy. *See id.*

Further, the district court could have limited the Facebook statements "to show the attitude of mind of [Mr. Corrigan] towards [Mr. Hall]," *see Muguerza*, 46 Idaho at ___, 268 P. at 2, which would have in turn limited the danger of unfair prejudice. As the Idaho Supreme Court put it in *Goodrich*:

> A statement which would be pure hearsay as to the truth of the matters alleged is not made inadmissible thereby if introduced solely to show the declarant's state of mind and if accompanied by a limiting instruction. This represents a basic policy judgment that the possibility of misuse of the evidence for the impermissible purpose, when minimized by a limiting instruction, is a risk worth chancing when compared to the harms that would likely result from the total exclusion of valuable relevant evidence.

Goodrich, 97 Idaho at 478 (internal quotation marks omitted). The probative value of the Facebook statements was not outweighed by the possibility of unfair prejudice.

In sum, the Facebook statements fit within the state of mind exception to the hearsay rule, and were relevant because they had a tendency to make it more probable that Mr. Corrigan was the first aggressor. The probative value of the Facebook statements was not outweighed by the possibility of unfair prejudice. The Facebook statements therefore should have been admitted into evidence. *See Shackleford*, 150 Idaho at 364-65. Thus, the district court abused its discretion when it excluded the Facebook statements from evidence, because it did not act consistently with the applicable legal standards.

D. The State Will Be Unable To Prove That The Error Is Harmless

In addition to the reasons articulated in Sections I(C) and II(C)(3) of this brief above, the State will be unable to prove that the exclusion of the Facebook statements is harmless beyond a reasonable doubt. *See State v. Perry*, 150 Idaho 209, 227 (2010). As discussed above, Mr. Hall's theory of the case was that he acted in self-defense and that Mr. Corrigan was the first aggressor. (*See, e.g.*, Tr., p.2598, Ls.6-7, 17-19.) Had the Facebook statements been admitted into evidence, would have helped establish that Mr. Corrigan was the first aggressor.

Further, the State amplified the harm by focusing during its closing argument on the apparent lack of evidence that Mr. Corrigan fought with Mr. Hall. The State argued that the evidence that Mr. Corrigan and Mr. Hall were seen two feet apart, and that the shot to Mr. Corrigan's chest was fired from a distance of two to three feet, was "inconsistent with the theory that those two were fighting." (Tr., p.2573, L.16 – p.2574, L.4.) In its rebuttal, the State also argued that there was no evidence of fighting. (Tr., p.2610, L.13 – p.2611, L.10.) However, Dr. Groben testified that, on Mr. Corrigan's left hand, he saw abrasions on the knuckles which looked fresh. (Tr., p.1847, Ls.15-25.)

In short, the State will be unable to prove that the exclusion of the Facebook statements is harmless beyond a reasonable doubt.

IV.

The District Court Erred When It Allowed Mr. Toluse To Testify About What He Taught In His Concealed Carry Class

A. Introduction

Mr. Hall asserts that the district court erred when it allowed Mr. Toluse to testify about what he taught in his concealed carry class, because the testimony was not relevant.

During the State's case in chief, the State called Mr. Toluse as a witness. (Tr., p.1884, Ls.20-24.) Mr. Toluse was a certified Use of Deadly Force instructor. (Tr., p.1884, L.24 – p.1886, L.3.) Mr. Hall's counsel objected to Mr. Toluse's testimony, noting that Mr. Toluse "instructed Mr. Hall some six years ago at the concealed weapons permit training class that I think the State of Idaho requires." (Tr., p.1886, Ls.21-24.)

> I think before we get into it, I want an offer of proof from the state how this is relevant to anything concerning Rob Hall's actions on March, 2011, and the allegations that he committed the crime of first degree murder.
>
> The mere fact that this man may have had him in a class, I don't think the man probably remembers Mr. Hall personally. I may have been wrong about that, but what does all this have to do with anything that's going to be relevant to the ultimate issue in this case?

(Tr., p.1886, L.25 – p.1887, L.10.) The district court allowed Mr. Toluse's testimony to proceed, but also stated, "If he doesn't have a recollection of the student or what he taught him about how to use a firearm, then certainly at that point in time he is not qualified to testify." (Tr., p.1887, L.11 – p.1888, L.3.) When Mr. Toluse testified that his records indicated that he taught a class to Mr. Hall, Mr. Hall objected for lack of identification, and the district court sustained the objection. (Tr., p.1889, L.22 – p.1890, L.5.) After Mr. Toluse testified that he did not know Mr. Hall and could not identify him in the courtroom, Mr. Hall objected to any further testimony

because it was "not related to this case." (Tr., p.1890, L.6 – p.1891, L.1.) The district court sustained the objection, "unless there's some other identification that the witness can provide." (Tr., p.1891, Ls.2-9.)

The State later had Nora Cole, the concealed weapons specialist for Ada County, testify that Mr. Hall indicated in his concealed carry license application that he took a class from Mr. Toluse on November 4, 2006. (Tr., p.2105, L.7 – p.2107, L.25.) The State then recalled Mr. Toluse, who testified that his roster for the November 4, 2006 class indicated that Mr. Hall took the class. (Tr., p.2110, L.14 – p.2111, L.18.) Mr. Hall made a continuing objection to Mr. Toluse's testimony based on "the previously made objection," but the district court overruled the objection. (Tr., p.2113, Ls.9-13.)

Mr. Toluse then testified about the subjects he covered during his concealed carry classes. (Tr., p.2114, L.18 – p.2119, L.25, p.2124, L.1 – p.2129, L.12.) In the middle of the testimony, the district court gave the jury a limiting instruction:

> Mr. Toluse is here to testify regarding instruction that he gave on the dates in question. That's a limited purpose of his testimony, is what he instructed upon.
>
> Issues such as self-defense or use of force, the court, at the end of the trial if appropriate, will give you detailed instructions on those subjects. So do not consider this evidence other than the limited purpose for which it is being admitted, and that was what the instruction was.

(Tr., p.2123, Ls.13-23.) Mr. Toluse testified that he taught that all three factors in the "AOJ" triad[10] must be present before the use of deadly force. (Tr., p.2115, L.16 – p.2118, L.1.) Mr. Hall objected to the AOJ triad testimony because it was testimony on legal standards, but the

[10] Mr. Toluse testified that "AOJ is ability, opportunity, and in jeopardy." (Tr., p.2116, Ls.12-13.) "Ability means that the defender has knowledge that the aggressor has the ability to cause death or great bodily harm." (Tr., p.2116, L.25 – p.2117, L.2.) "Opportunity means that the person has the power to immediately employ the ability with a firearm." (Tr., p.2117, Ls.9-11.) "Jeopardy is the person, is the aggressor acting in a manner which a reasonable and prudent person would conclude the aggressor's intent is to in fact kill or cripple." (Tr., p.2117, Ls.16-19.)

district court overruled the objection because the testimony was "just teaching in the trial." (Tr., p.2116, Ls.15-23.) Mr. Toluse also testified that, "Any firearm should always be carried in some type of holster." (Tr., p.2119, Ls.18-22.)

Mr. Toluse additionally told the jury that he taught the "SAFE principle," SAFE being an acronym: "S stands for secure yourself from the threat, A is avoid the threat, F is flee from the threat, and E is if you must, you have to engage the threat." (Tr., p.2126, Ls.3-9.) He testified that, "If you can avoid the threat, if you see something that is a potential threat, then you should avoid it. I'm not going to walk down the street when there's potential danger down that street. If I'm confronted, then I'm going to flee. I will run, I will beg my way out of a fight, I will do—." (Tr., p.2127, Ls.1-7.) Mr. Hall then objected because "[t]hat is not Idaho law. . . . Idaho does not have any such requirement, and Mr. Toluse's testimony would seem to indicate otherwise." (Tr., p.2127, Ls.8-12.) The district court overruled the objection "again with that limiting instruction. The court is going to give you [the jury] instructions as to the law regarding, again, appropriate self-defense." (Tr., p.2127, L.23 – p.2128, L.2.)

While cross-examining Mr. Toluse, Mr. Hall asked whether his class taught "the situation wherein the person who has the carried concealed permit as is carrying the gun in his pocket or in his hoodie, but not in his hands, and he is suddenly attacked, the gun falls out of his pocket, and he's shot." (Tr., p.2132, Ls.4-10.) "What's the reaction? What's the person who has the concealed weapon supposed to do then when it's knocked away from him and used against him?" (Tr., p.2132, Ls.11-13.) Mr. Toluse testified, "That's not anything that I cover in my class." (Tr., p.2132, Ls.14-15.)

During jury deliberations, the jury submitted the following question to the district court: "We would like clarification regarding the concealed weapon law. Does the law state how the weapon is to be carried when a person, such as holstered versus not holstered?" (Tr., p.2615,

L.22 – p.2616, L.3.) After consulting the parties, the district court gave the following answer: "No, the law does not require a weapon to be holstered." (Tr., p.2619, Ls.14-15.)

B. Standard Of Review And Applicable Laws

As previously discussed, whether evidence is relevant is a question of law that an appellate court reviews de novo. *Joy*, 155 Idaho at 6. "All relevant evidence is admissible except as otherwise provided by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible." I.R.E. 402. The Idaho Rules of Evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I.R.E. 401. "Whether a fact is 'of consequence' or material is determined by its relationship to the legal theories presented by the parties." *Shackelford*, 150 Idaho at 364 (quoting *Yakovac*, 145 Idaho at 444).

C. Mr. Toluse's Testimony On What He Taught In His Concealed Carry Class Was Not Relevant

Mr. Hall asserts that the district court erred when it allowed Mr. Toluse to testify on what he taught in his concealed carry class, because that testimony was not relevant. With respect to the alleged murder or self-defense, the testimony did not have any tendency to make the existence of any fact that was of consequence to the determination of the action more probable or less probable than it would have been without the testimony. *See* I.R.E. 401. Mr. Toluse's teachings were not relevant to whether any or all of the elements of the instant offense occurred. *See* I.C. §§ 18-4001, 18-4002 & 18-4003(a).

Further, Mr. Toluse's teachings were not relevant to Mr. Hall's self-defense theory of the case. As explained above, under I.C. § 18-4009(1) a homicide is justifiable when a violent attack against the defendant is actually occurring, and subsection (1) does not require that a defendant be motivated solely by an objectively reasonable fear or have any fear at all. *See* I.C. §§ 18-

4009(1) & 18-4010. Mr. Toluse admitted on cross-examination that his class did not cover a situation where a concealed carry license holder was suddenly attacked and shot. (*See* Tr., p.2132, Ls.4-15.) Thus, Mr. Toluse's teachings were not relevant to the issue of whether Mr. Hall committed justifiable homicide under Section 18-4009(1).

Nor were Mr. Toluse's teachings relevant to the issue of whether Mr. Hall committed justifiable homicide under Section 18-4009(2) or (3). A homicide is justifiable under subsections (2) and (3) if the fear of an anticipated attack was objectively reasonable and killing must have motivated solely by those objectively reasonable fears. *See* I.C. §§ 18-4009(2)-(3); 18-4010. Mr. Toluse's teachings did not make it more probable or less probable that Mr. Hall acted solely under the influence of an objectively reasonable fear. Thus, Mr. Toluse's teachings were not relevant to Mr. Hall's self-defense theory of the case.

In sum, the district court erred when it allowed Mr. Toluse to testify on what he taught in his concealed carry class, because that testimony was not relevant.

D. The State Will Be Unable To Prove That The Error Is Harmless

Because the district court's erroneous ruling was preserved by a timely objection, the State bears the burden of proving the error is harmless beyond a reasonable doubt. Additional harmless error arguments and authority can be found in sections I(C), II(C)(3), and III(D) above, and are incorporated herein by reference.

The State will be unable to prove that the error in allowing Mr. Toluse to testify on what he taught in his concealed carry class was harmless. Regarding justifiable homicide, the jury was only instructed on subsections (2) and (3) of I.C. § 18-4009, which require an objectively reasonable fear. (*See* Tr., p.2544, L.25 – p.2545, L.5.) "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as a an expert by knowledge, skill, experience, training, or

education, may testify thereto in the form of an opinion or otherwise." I.R.E. 702. "In order to be admissible under I.R.E. 702, the expert's testimony must assist the trier of fact to understand the evidence or determine a fact that is in issue." *State v. Ellington*, 151 Idaho 53, 66 (2011) (internal quotation marks omitted). Under I.R.E. 704, an expert's testimony is not inadmissible merely because it embraces an ultimate issue to be decided in the case, but "[e]xpert testimony that concerns conclusions or opinions that the average juror is qualified to draw from the facts utilizing the juror's common sense and normal experience is inadmissible." *Id.* (internal quotation marks omitted) (alteration in original). To the extent that the State offered Mr. Toluse's testimony as expert testimony to inform the jury's determination as to whether Mr. Hall had an objectively reasonable fear, that was improper because it concerned "conclusions or opinions that the average juror is qualified to draw from the facts utilizing the juror's common sense and normal experience." *See id.*

Additionally, the jury question during deliberations indicates that Mr. Toluse's testimony on what he taught in his concealed carry class confused the issues and misled the jurors. *See* I.R.E. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury . . . .") The district court instructed the jury that it could consider Mr. Toluse's testimony only for the limited purpose of what he taught. (*See* Tr., p.2123, Ls.13-23.) However, the jury question indicates that the jury thought that Mr. Toluse's testimony covered the legal standards for self-defense and concealed carry under Idaho law. Mr. Toluse testified that: "Any firearm should always be carried in some type of holster." (Tr., p.2119, Ls.18-22.) The jury asked the district court: "We would like clarification regarding the concealed weapon law. Does the law state how the weapon is to be carried when on a person, such as holstered versus not holstered?" (Tr., p.2615, L.22 – p.2616, L.3.)

The jury's question on whether Idaho law required a concealed carry weapon to be holstered, after the jury heard testimony on Mr. Toluse's teachings on how a concealed carry weapon should always be holstered, indicates that Mr. Toluse's testimony confused the issues and misled the jury on the legal standards for self-defense and concealed carry under Idaho law, despite the district court's limiting instruction. *See State v. Carson*, 151 Idaho 713, 718 (2011) (indicating that the presumption that the jury followed the given jury instructions may be rebutted, if there is an "indication that the jury did not follow the court's instructions"). Mr. Toluse's teachings went beyond or contradicted Idaho law in many aspects (e.g., the AOJ triad requirement to use deadly force; the duty to flee), but the district court only clarified that his teaching on always holstering a concealed carry weapon was not required under Idaho law. Thus, the jury, having already not heeded the district court's limiting instruction, may have applied the rest of Mr. Toluse's teachings (and not Idaho law) when it rejected Mr. Hall's self-defense theory.

Further, the State's closing argument exacerbated the harm by focusing on how Mr. Hall did not leave the Walgreens. In its closing argument, the State argued that Mr. Hall, "instead of going home and waiting for his wife, who according to his daughter comes home every night, he waited a total of 17 minutes for Kandi Hall and Emmett Corrigan." (Tr., p.2562, Ls.15-18.) After Mr. Corrigan threatened him with the statement, "I'll break your fucking head," the State contended, "He has been threatened. Does he leave? No, he waits." (Tr., p.2563, Ls.19-23.) Mr. Toluse told the jury that he taught, "If I'm confronted, then I'm going to flee. I will run, I will beg my way out of a fight . . . ." (Tr., p.2127, Ls.5-7.) But Idaho law does not actually require a person to flee or otherwise retreat before engaging in self-defense. *See* I.C. § 18-4009 & 18-4010.

In sum, the State will be unable to prove that the error in allowing Mr. Toluse to testify on what he taught in his concealed carry class was harmless beyond a reasonable doubt.

V.

Even If The Above Errors Are Individually Harmless, Mr. Hall's Fourteenth Amendment Right To Due Process Of Law Was Violated Because The Accumulation Of Errors Deprived Him Of His Right To A Fair Trial

Mr. Hall asserts that if the Court finds that the above preserved errors were individually harmless, the district court's errors combined amount to cumulative error. "The cumulative error doctrine refers to an accumulation of irregularities, each of which by itself might be harmless, but when aggregated, show the absence of a fair trial in contravention of the defendant's constitutional right to due process." *State v. Paciorek,* 137 Idaho 629, 635 (Ct. App. 2002). In order to find cumulative error, this Court must first conclude that there is merit to more than one of the alleged errors and then conclude that these errors, when aggregated, denied the defendant a fair trial. *State v. Lovelass,* 133 Idaho 160, 171 (Ct. App. 1999). Under that doctrine, even when individual errors are deemed harmless, an accumulation of such errors may deprive a defendant of a fair trial. *State v. Martinez,* 125 Idaho 445, 453 (1994). However, a finding of cumulative error must be predicated upon an accumulation of actual errors. *State v. Medina,* 128 Idaho 19, 29 (Ct. App. 1996).

Mr. Hall asserts that the district court's errors in his trial amounted to actual errors depriving him of a fair trial. His arguments in support of this assertion are found in sections I(C), III(D), and IV(D) above, and need not be repeated, but are incorporated herein by reference.

CONCLUSION

Mr. Hall respectfully requests that this Court vacate his conviction and remand his case to the district court.

DATED this 3rd day of November, 2014.

JASON C. PINTLER
Deputy State Appellate Public Defender

BEN P. McGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of November, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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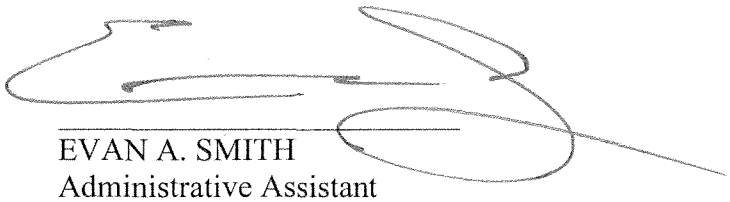

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